

# SENATE BILL No. 97

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-10.

**Synopsis:** Funding of lawsuits. Establishes a procedure by which a company may provide a loan to the plaintiff in an action in exchange for the contingent right to receive a part of the potential proceeds of the action. Provides that a violation of the conditions under which a loan may be offered to a plaintiff constitutes a deceptive act subject to enforcement by the attorney general.

**Effective:** July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Judiciary.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

## SENATE BILL No. 97

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-10 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2011]:

### 4 ARTICLE 10. CONSUMER LEGAL FUNDING

#### 5 Chapter 1. Definitions

6 Sec. 1. As used in this article, "consumer" means a natural  
7 person who:

8 (1) resides in Indiana; or

9 (2) elects to enter into a consumer legal funding transaction in  
10 Indiana.

11 Sec. 2. As used in this article, "consumer legal funding" means  
12 the funding provided to a consumer by a consumer legal funding  
13 company in a consumer legal funding transaction.

14 Sec. 3. (a) As used in this article, "consumer legal funding  
15 company" means a person or entity that enters into a consumer  
16 legal funding transaction with a consumer.

17 (b) The term includes the following:



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(1) An affiliate or subsidiary of a consumer legal funding company.

(2) An entity or person who buys a whole or partial interest in a consumer legal funding company.

(3) A person who acts as an agent to provide consumer legal funding from a third party for a fee.

(4) A person who acts as an agent for a third party in providing consumer legal funding for a fee, regardless of whether approval or acceptance by the third party is necessary to create a legal obligation for the third party.

(5) Any other person or entity that is determined by the attorney general to be engaged in a transaction that is in substance:

(A) disguised consumer legal funding; or

(B) a subterfuge for the purpose of avoiding this chapter.

(c) The term does not include the following:

(1) A bank, lender, financing entity, or other special purpose entity:

(A) that provides financing to a consumer legal funding company; or

(B) to which a consumer legal funding company grants a security interest or transfers any rights or interest in consumer legal funding.

(2) An attorney or accountant who provides services to a consumer.

**Sec. 4.** As used in this article, "consumer legal funding contract" means a contract providing for a consumer legal funding transaction.

**Sec. 5.** As used in this article, "consumer legal funding transaction" means a transaction in which:

(1) a consumer legal funding company provides consumer legal funding to a consumer; and

(2) the consumer assigns to the consumer legal funding company the contingent right to receive a part of the settlement, insurance payment, or award of damages obtained in the consumer's legal action.

**Sec. 6.** As used in this article, "funding amount" means the dollar amount of consumer legal funding provided to the consumer by the consumer legal funding company in a consumer legal funding transaction.

**Sec. 7.** As used in this article, "funding date" means the date on which a consumer legal funding company provides the funding

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amount to the consumer.

**Sec. 8. (a)** As used in this article, "legal action" means:

- (1) a bona fide civil action in which damages may be awarded;
- or
- (2) a cause of action upon which a civil action described in subdivision (1) may be based.

**(b)** The term includes:

- (1) any settlement or negotiations toward settlement of a civil action described in subsection (a)(1); or
- (2) any agreement or negotiations toward an agreement under which a civil action based upon a cause of action described in subsection (a)(2) would not be initiated.

**Sec. 9.** As used in this article, "proceeds" means the funds from a settlement, insurance payment, or award of damages obtained in the consumer's legal action from which a payment to the consumer legal funding company may be made after reductions are made in accordance with this chapter.

**Sec. 10.** As used in this article, "resolution date" means the date of receipt of:

- (1) the repayment of the funding amount; and
- (2) the payment of agreed upon fees connected with the consumer's legal action;

by the consumer legal funding company.

## **Chapter 2. Consumer Legal Funding**

**Sec. 1. (a)** A person may not enter into a consumer legal funding transaction with a consumer with respect to a particular legal action unless the consumer is represented by an attorney with respect to that legal action at the time the consumer enters into the consumer legal funding transaction.

**(b)** A consumer legal funding contract entered into in violation of subsection (a) is void.

**Sec. 2.** A consumer legal funding contract must be in writing and must comply with the following requirements:

- (1) The contract must contain on the front page, each with a separate heading and in at least 12 point bold type, the following disclosures:

- (A) The total funding amount paid to the consumer.
- (B) An itemization of one (1) time fees.
- (C) The total dollar amount of the proceeds assigned by the consumer to the consumer legal funding company, set forth in one hundred eighty (180) day intervals for one thousand eighty (1,080) days beginning one hundred eighty (180)

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days after the funding date.

(D) A calculation of the annual percentage fee for each one hundred eighty (180) day interval.

(2) The contract must provide that the consumer may cancel the contract not later than five (5) business days following the consumer's receipt of the funding amount, without penalty or further obligation. The contract must contain the following notice written in at least 12 point bold type: "Consumer's right to cancellation: You may cancel this contract without penalty or further obligation within 5 business days after the funding date.".

(3) The contract must specify that in order for the cancellation described in subdivision (2) to be effective the consumer must return to the consumer legal funding company the total amount of the funding amount by:

(A) delivering the consumer legal funding company's uncashed check to the company's offices in person not later than five (5) business days after receipt of the funding amount;

(B) sending a notice of cancellation via registered or certified mail and including in the mailing a return of the total amount of the funding amount in the form of the consumer legal funding company's uncashed check not later than five (5) business days after receipt of the funding amount; or

(C) sending a registered, certified, or cashier's check or money order by insured, registered, or certified United States mail, postmarked not later than five (5) business days after receipt of the funding amount, to the address specified in the contract for cancellation.

(4) The contract must contain the following statements in at least 12 point bold type:

(A) "(Insert name of the consumer legal funding company) agrees that it has no right to and will not make any decisions with respect to the conduct of the legal action or any settlement or resolution of the legal action, and that the right to make those decisions remains solely with you and your attorney in the legal action. (Insert name of the consumer legal funding company) further agrees that it has no right to pursue the legal action on your behalf.".

(B) "(Insert name of the consumer legal funding company) agrees that it may accept only an assignment of a

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contingent right to receive a portion of the potential proceeds (rather than an assignment of your legal action) and the contracted return of the funding amount. (Insert name of the consumer legal funding company) further agrees that any agreed upon fees assigned to (insert name of the consumer legal funding company) may not be determined as a percentage of your recovery from the legal action but must be fixed as a contractually determined amount based upon the interval of time from the funding date through the resolution date."

(5) All contracts with the consumer must contain the following statement, in plain language in a box with 15 point bold type, in all capital letters, stating the following:

**"THE FUNDING AMOUNT AND AGREED UPON FEES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL ACTION, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL ACTION. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL ACTION."**

(6) The contract must contain the following statement in at least 12 point bold type located immediately above the space where the consumer's signature is required:

**"Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completely filled in copy of this agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public, or private benefit planning or financial professional. You acknowledge that your attorney in the legal action has provided no tax, public, or private benefit planning regarding this transaction. You further understand and agree that the funds you receive from (insert name of the consumer legal funding company) may not be used to pay for or be applied to the payment of attorney's fees or litigation costs related to your legal action."**

(7) The executed contract must contain a written acknowledgment by the consumer that the consumer has reviewed the contract in its entirety.

(8) The consumer legal funding company shall provide the consumer's attorney with a written notification of the

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consumer legal funding provided to the consumer within three (3) business days of the funding date by way of United States mail, courier service, facsimile, or other means of service evidencing proof of delivery, unless there is a written acknowledgment by the attorney representing the consumer in the legal action as to the terms of the contract.

(9) The contracted return of the funding amount, plus any agreed upon fees assigned to the consumer legal funding company on the resolution date, may not be determined as a percentage of the recovery from the legal action but must be fixed as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

Sec. 3. Any attorney's fee, Medicare or Medicaid liens, and statutory health care provider liens arising from the consumer's underlying legal action take priority over any claim of the consumer legal funding company. All other liens or security interests take priority by normal operation of law.

Sec. 4. Each consumer legal funding company shall adhere to the following:

(1) The consumer legal funding company may not pay or offer to pay any compensation to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to the consumer legal funding company. The consumer legal funding company agrees not to accept any compensation from any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees, other than the funding amount and any agreed upon fees the consumer assigned to the consumer legal funding company out of the potential proceeds of the legal action.

(2) The consumer legal funding company may not advertise false or intentionally misleading information regarding its product or services.

(3) The consumer legal funding company may not knowingly provide funding to a consumer who has previously sold and assigned an amount of the potential proceeds of the consumer's legal action to another consumer legal funding company without first purchasing that consumer legal funding company's entire accrued balance, unless otherwise agreed to in writing by the consumer and all consumer legal funding companies that provided the consumer legal funding

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to the consumer.

(4) The consumer legal funding company may not offer single premium credit life, disability, or unemployment insurance that will be financed through a consumer legal funding transaction.

(5) For a non-English speaking consumer, upon the written request of the consumer or the consumer's attorney:

(A) the terms of the contract required by this chapter must be translated in writing into the consumer's primary language;

(B) the consumer must sign the translated document containing the translated terms and initial each page; and

(C) the translator or attorney must sign an affirmation confirming that the translated terms have been presented to the consumer in the consumer's primary language and acknowledged by the consumer.

(6) The consumer legal funding company may not knowingly enter into a consumer legal funding contract with a consumer if the consumer's legal action is a pending class action lawsuit at the time of the funding. If any legal action in which a consumer has received consumer legal funding is certified as a class action, the consumer legal funding company may provide no further funding.

(7) An attorney or law firm may not have a financial interest in the consumer legal funding company providing consumer legal funding to a consumer represented by that attorney or law firm.

(8) No communication between a consumer's attorney and a consumer legal funding company relating to a consumer's consumer legal funding transaction may limit, waive, or abrogate any statutory or common law privilege, including the attorney client privilege or the work product doctrine.

(9) The return of the funding amount to the consumer legal funding company, plus any agreed upon fees, may be rendered only out of the proceeds, if any, of the realized settlement, insurance payment, or award of damages the consumer may receive in the consumer's legal action. The consumer may not assign any part of the potential proceeds which, under the contingent fee agreement between the consumer and the consumer's attorney, will be remitted to the consumer's attorney as attorney's fees or reimbursement for costs incurred by the consumer's attorney in connection with

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the legal action.

(10) If the proceeds of the legal action are insufficient to return the full funding amount plus the agreed upon fees to the consumer legal funding company from the proceeds of the legal action, the consumer legal funding company is entitled to be paid only that part of the full amount of the funding amount plus the agreed upon fees that can be paid from the settlement, insurance payment, or award of damages. However, this subdivision does not apply if the consumer is found to have committed fraud against the consumer legal funding company.

(11) The consumer legal funding company has no authority to make any decision with respect to the conduct of the litigation of the legal action or any settlement or resolution of the action. The right to make those decisions remains solely with the consumer and the consumer's attorney representing the consumer in the legal action. The consumer legal funding company has no right to pursue the legal action on the consumer's behalf.

(12) The consumer legal funding company may accept only an assignment of a contingent right to receive a part of the potential proceeds, rather than an assignment of the legal action. The contracted return of the funding amount, plus any agreed upon fees assigned to the consumer legal funding company, may not be determined as a percentage of the total recovery from the legal action, but must be fixed as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

(13) The contact between the consumer legal funding company and the consumer is subject to the following limitations:

(A) The consumer legal funding company may not contact the consumer after the funding date in order to influence any decisions with respect to the conduct of the legal action or any settlement or resolution of the legal action. However, the consumer legal funding company may contact the consumer or the consumer's attorney to obtain the status of the legal action and may contact the consumer after the funding date to obtain updated attorney contact information.

(B) After the resolution date, a consumer legal funding company may not seek to collect additional funds or

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threaten civil action for any deficiency.

**Sec. 5. A consumer legal funding transaction that complies with this chapter is not:**

- (1) an investment contract; or
- (2) subject to any other statutory or regulatory provisions governing loans or investment contracts.

**Sec. 6. To the extent that this chapter conflicts with any other law, this chapter supersedes the other law for the purposes of regulating consumer legal funding in Indiana.**

**Sec. 7. (a) A violation of this chapter is a deceptive act that is actionable by the attorney general.**

**(b) The attorney general may bring an action under this article to obtain any or all of the following:**

- (1) An injunction to enjoin future violations of this chapter.
- (2) A civil penalty of not more than ten thousand dollars (\$10,000) per deceptive act.
- (3) The attorney general's reasonable costs in:
  - (A) the investigation of the deceptive act; and
  - (B) maintaining the action.

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